

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JOHN KILGALLON, DANIEL C.
MOSTELLER and STEPHEN
HOUGHTALING,
Defendants.

Case No. 1:21-cr-10023-BCB

**UNITED STATES OF AMERICA'S
RESPONSE TO
MOTION TO QUASH**

The United States of America, by and through Special Prosecutors Thomas G. Fritz and Cassidy M. Stalley, respectfully submit this response to Defendants' Motion to Quash.

On September 29, 2021, the undersigned Special Prosecutor served, via facsimile, two subpoenas duces tecum on Verizon Wireless to obtain the cell phone records of two of the defendants in regards to the above-entitled matter. *See Exhibit 1.* The subpoenas were limited in time and scope, and specifically requested:

A list or report of all incoming and outgoing calls, call detail, text messages, picture detail, and internet sessions for cellular telephone number (605) XXX-XXXX¹, from March 1, 2021 to May 12, 2021, including the times of usage initiated and duration of use.

¹ The Department of Justice cell phone numbers have been redacted in this filing, but will be provided to the Court upon request.

Id. The subpoenas directed that the documents be produced to the Special Prosecutor's office, on or about October 13, 2021. *Id.* Prior to serving the subpoenas, the undersigned served notice and copy of the subpoena on the defendants' counsel via email. *See Exhibit 2.*

The Special Prosecutor in good faith believed that, as an attorney, the prosecutor could sign the subpoenas, and therefore failed to first request that the Clerk issue the subpoenas as specifically provided under Federal Rule of Criminal Procedure 17(c).

Therefore, the undersigned Special Prosecutor withdraws the attached subpoenas duces tecum. The Special Prosecutor will file, simultaneous herewith, a motion for issuance of subpoenas duces tecum, requesting pretrial production of the defendants' cell phone records, and showing the requested documents are evidentiary and relevant, and that the application is made in good faith and is not intended as a general fishing expedition. *See United States v. Bueno*, 443 F.3d 1017, 1026 (8th Circuit); *see also United States v. Blue*, 340 F. Supp. 3d 862, 869 (D.S.D. 2018).

Dated October 5, 2021.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: /s/ Cassidy M. Stalley
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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2021, I sent to:

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by Notice of Electronic Filing generated by the CM/ECF system, a true and correct copy of **United States Of America's Response To Motion To Quash** relative to the above-entitled matter.

/s/ Cassidy M. Stalley
Cassidy M. Stalley